

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HAI M. NGUYEN,

Plaintiff,

CIV. S-03-1395 PAN

v.

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,

ORDER

Defendant.

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On July 1, 2003, plaintiff, through her counsel, Eugenie Mitchell, filed a complaint seeking review of a final decision of the Commissioner of Social Security denying plaintiff's application for disability benefits. On October 9, 2003, the court approved the parties' stipulation remanding this case to the Commissioner pursuant to sentence six of 42 U.S.C. 405(g) for completion of the record.

On March 1, 2004, the Commissioner wrote to plaintiff's

1 counsel noting the inclusion of twenty additional documents in  
2 the final administrative record and according counsel thirty days  
3 within which to review the record and request a supplemental  
4 hearing before an administrative law judge.

5 On September 3, 2004, in the absence of a response from  
6 plaintiff's counsel, the Commissioner filed and served its answer  
7 after remand and a copy of the administrative transcript. Also  
8 on September 3, plaintiff's law partner, Bess Brewer, signed a  
9 stipulation with the Commissioner redacting one page from the  
10 administrative transcript.

11 The scheduling order issued July 1, 2003, directed  
12 plaintiff to file and serve a motion for summary judgment within  
13 60 days after the filing of defendant's answer or, based on these  
14 facts, by November 2, 2004.

15 On March 21, 2005, I ordered plaintiff, through her  
16 counsel, to show cause in writing within 11 days why this action  
17 should not be dismissed for failure timely to file and serve a  
18 motion for summary judgment. Plaintiff has not responded to the  
19 court's order.

20 Fed. R. Civ. P. 41(b) allows dismissal for "failure of  
21 the plaintiff to prosecute or to comply with these rules or any  
22 order of court . . ." A federal district court has the inherent  
23 power to dismiss a case *sua sponte* under Rule 41(b). Link v.  
24 Wabash R. Co., 370 U.S. 626, 630-32 (1962). Dismissal is also  
25 authorized by Fed. R. Civ. P. 16(f) (dismissal appropriate "[i]f  
26 a party . . . fails to obey a scheduling order or pretrial

1 order"); and E. D. Cal. L. R. 11-110 ("Failure of . . . a party  
2 to comply with these Rules or with any order of the Court may be  
3 grounds for imposition by the Court of any and all sanctions  
4 authorized by statute or Rule or within the inherent power of the  
5 court").

6 These rules compel dismissal of this action. In  
7 addition, the court has reviewed the administrative law judge's  
8 decision in light of the subsequently filed documents (only one  
9 of the twenty new documents includes medical records (see Tr. 2-  
10 4, 224-252)), and concludes the administrative law judge has  
11 applied the appropriate legal standards and his factual findings  
12 are supported by substantial evidence (see Orteza v. Shalala, 50  
13 F.3d 748 (9th Cir. 1995)). Dismissal of this action will not be  
14 prejudicial to plaintiff.

15 Accordingly, this action is hereby dismissed.

16 So ordered.

17 Dated: July 6, 2005.

18 /s/ Peter A. Nowinski

19 PETER A. NOWINSKI  
Magistrate Judge

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